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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Communications Assistance for)	CC Docket No. 97-213
Law Enforcement Act)	
)	
Public Notice, Comment Sought on CALEA)	DA 99-863
Revenue Estimates of Five Manufacturers)	

To: Chief, Office of Engineering and Technology

**COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.
CONCERNING AGGREGATE CALEA REVENUE ESTIMATES**

AirTouch Communications, Inc. ("AirTouch"), by its attorneys, hereby submits comments in response to the Office of Engineering and Technology's Public Notice, *Comments Sought on CALEA Revenue Estimates of Five Manufacturers*, DA 99-863 (OET May 7, 1999) ("Public Notice").

The Commission has a difficult task in determining whether the FBI's "punch list" will achieve CALEA's assistance capability requirements in a cost-effective manner. Obviously, this requires some meaningful measure of the cost of punch list implementation. However, there is little publicly available cost information, since neither the manufacturers nor the FBI have made public their confidential estimates. Accordingly, the staff has done the next best thing — by attempting to develop a useful record by seeking comment on an aggregate of confidential data submitted by manufacturers.

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As discussed herein, AirTouch submits that the aggregate cost estimates on which the Commission seeks comment are incomplete and flawed, but they do provide a rough order-of-magnitude guideline — a floor that the actual total cost for CALEA implementation is sure to exceed. The data establish, as do the estimates contained in several carriers' earlier comments, that the punch list is *not* cost-effective and must be rejected.¹

The record in this proceeding clearly establishes that cost must be a key factor in any Commission determination as to whether an industry-developed standard is deficient. Despite the recently-repeated protestations of the FBI and Justice Department that costs are of limited relevance to this determination,² CALEA's provisions on evaluation of deficiency petitions require costs to be expressly considered under two separate statutory factors — whether additional requirements are a cost-effective way to meet the Section 103 assistance capability requirements and whether costs to residential ratepayers will be minimized.³ Costs must also be considered in determining whether a given item of call-identifying information is “reasonably available” under Section 103(a)(2).⁴

¹ AirTouch has been an active participant in the FCC and FBI proceedings concerning CALEA and is well aware of the difficulty of estimating the cost of compliance with standards that have not yet even been decided upon. Only a few commenters, including AirTouch, submitted even rough estimates of the cost of implementing the FBI's “punch list.” The FBI has declined to submit any cost estimates of its own, even in aggregate form, although major manufacturers have given it confidential cost data.

² See DOJ/FBI Petition for Reconsideration, CC Docket 97-213, filed March 31, 1999. In that filing, the FBI sought reconsideration of OET's March 2 decision to grant confidentiality to the five manufacturers whose aggregate data is the subject of the instant comment cycle. While opposing the grant of confidentiality on the ground that this impedes access to information, the FBI at the same time argues that cost considerations have only a “limited role” under CALEA § 107(b) and “bear only incidentally” on the Commission's decision. *Id.* at 3, 4.

³ See CALEA § 107(b)(1), (3), 47 U.S.C. § 1006(b)(1), (3).

⁴ CALEA § 103(a)(2), 47 U.S.C. § 1002(a)(2).

The aggregate data that the Commission has extracted from the five manufacturers' confidential submissions establish beyond doubt that the cost of CALEA implementation will be enormous, even if only the J-STD-025 is followed, and that inclusion of the FBI's punch list will drive CALEA costs up to an even greater and unanticipated level. While there would be significant problems with relying on the aggregate data as evidence of what the actual total costs will be, the data do serve to establish a floor and provide relevant evidence for a Commission determination in this proceeding that the punch list items are too costly and do *not* meet CALEA requirements.

For reasons discussed herein, and acknowledged in the Public Notice, the total costs will certainly be no lower than the aggregate estimate. As a result, the Commission now has record evidence that the cost of J-STD-025 compliance will, at a minimum, exceed \$916 million and that the total cost of the punch list will exceed \$414 million. This confirms AirTouch's earlier estimate that the cost will, at a minimum, be hundreds of millions of dollars. The FBI, on the other hand, has supplied no cost data at all; thus, it cannot reasonably contest that its punch list is an extraordinarily costly proposition.

Consequently, and based on the record established, the Commission now must conclude that the punch list is *not* a "cost-effective" way of meeting the requirements of Section 103 and will *not* minimize costs to residential subscribers. In addition, the cost data demonstrate that, to the extent the punch list items involve call-identifying information, they clearly cannot be described as "reasonably available," given that more than \$414 million must be paid to manufacturers just to develop these capabilities, which serve no telecommunications purpose and would therefore not be developed by manufacturers or purchased by carriers in the ordinary course of their business.

It must be emphasized that the actual costs of CALEA compliance will inevitably be higher than the amounts set forth in the Commission's aggregation. The Public Notice acknowledges as much by noting that the aggregate represents incomplete — and imperfect — estimates for only five manufacturers. The Public Notice also acknowledges that other manufacturers will also be selling CALEA-compliant equipment and software upgrades and thereby incurring additional costs. The Public Notice further recognizes that the five manufacturers' estimates "do not represent all CALEA-related software and equipment revenues anticipated by these manufacturers."⁵ As a consequence, the actual amounts that must be paid even to these five manufacturers will be higher than the estimates. The Public Notice also indicates that only some of the manufacturers' estimates include necessary hardware. Hardware expenses will increase the total costs beyond the revenue estimates aggregated in the Public Notice. Moreover, carriers will incur extensive expenses necessary to becoming CALEA compliant that will not be paid to telecommunications equipment manufacturers — there will be considerable in-house engineering and implementation costs and purchases from third-party suppliers.⁶

The comments filed in this proceeding by certain carriers confirm just how low (and preliminary in nature) the aggregated estimates are. For example, the aggregate data chart

⁵ Public Notice at 2.

⁶ As the Public Notice indicates, some but not all of the manufacturers predicate their estimates on a nationwide "buy-out" — an arrangement whereby the government would agree to pay one or more manufacturers the cost of developing software upgrades, which would then be licensed to carriers at no additional charge. Obviously, there are substantial steps to be taken before a buy-out is a reality. Such an agreement would not, in any event, substantially change the total cost of punch list implementation, since it would really change only the method of paying for it. A buy-out would, however, change the way in which manufacturers are paid, and this could artificially increase or decrease a manufacturer's estimate of revenues attributable to the punch list. Accordingly, the fact that the manufacturers' estimates are not on common ground with respect to this factor increases the aggregate's potential margin of error.

contains an estimate of \$180 million for wireline punch list compliance. One commenter, however, estimated just its *own* punch list compliance costs at \$182 million.⁷ Another company estimated that the total cost of punch list compliance would be in the billion-dollar range.⁸ These commenters' estimates also indicate that the aggregate figures in the Public Notice substantially understate the cost of punch list compliance. Moreover, and as AirTouch noted in its comments, the cost of hardware for Dialed Digit Extraction under the punch list could equal the entire cost of the punch list software upgrade — a “prohibitive” cost, in the words of one of AirTouch's vendors.⁹ Indeed, the incomplete aggregate figures in the Public Notice confirm AirTouch's original comments that “[a]t a minimum, the cost of fully deploying the punch list items would be hundreds of millions of dollars in addition to the cost of complying with J-STD-025.”¹⁰

The Public Notice acknowledges that the various manufacturers' estimates are predicated on a wide variety of assumptions and are not directly comparable. As a result, AirTouch submits that the aggregate of these estimates is useful only for order-of-magnitude estimation purposes. In fact, AirTouch encountered the same difficulty when it attempted to compare various vendors' estimates, which were premised on very different approaches.¹¹ In sum, because many costs were not included, and because of the variations in the data provided and the varying assumptions underlying the data, the order-of-magnitude aggregate estimates can properly be used only for the purpose of establishing a cost floor and *not* as a predictor of what the actual costs will be.

⁷ See BellSouth Comments at 2.

⁸ See SBC Comments at 5.

⁹ AirTouch Comments at 27-28.

¹⁰ AirTouch Comments at 14.

¹¹ See AirTouch Comments at 13 (“These estimates are difficult to compare, due to the differing architectures and technologies employed, and they are inherently ‘fuzzy’ because of the lack of any agreement on the scope of the punch list items.”).

Finally, the FBI argued in its petition for reconsideration that the confidential data submitted by the five vendors should be returned because any meaningful analysis of costs would require access to the data in non-aggregated form.¹² While this would be true *if* the data were being used to project the actual total cost of CALEA compliance, AirTouch submits that the use of aggregate data for roughly estimating the cost *floor* is appropriate, taking into account that the imperfections in the underlying data indicate that the actual cost will be in fact higher. The aggregated data clearly would *not* suffice as an evidentiary basis for a finding that the punch list is cost-effective, however. Making such a determination would require a public record with far more detailed cost evidence that can be analyzed by the public and relied upon by the Commission.¹³

In conclusion, AirTouch reemphasizes that the incomplete and imperfect nature of the cost estimates limits the usefulness and evidentiary value of the aggregated estimates. The aggregate data clearly cannot be used as a basis for an estimate of how much it will actually cost

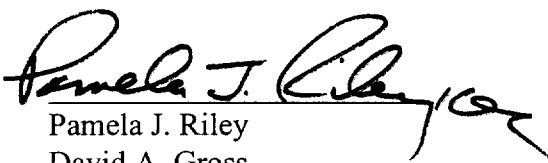
¹² DOJ/FBI Petition for Reconsideration at 6. The Commission has been placed in the position of having to “cobble” together a variety of incompatible, inconsistent, and incomplete cost estimates in part because the proponent of the punch list, the FBI, sat on the evidence in its possession, giving the Commission no cost evidence at all on which the Commission could base a ruling concerning cost-effectiveness. Under the circumstances, it perhaps is not surprising that the FBI has argued that cost is irrelevant to a cost-effectiveness determination.

¹³ The aggregated cost data also indicate that if the punch list is included, the minimum cost of CALEA compliance will greatly exceed the \$500 million appropriated by Congress for reimbursement of eligible carrier costs. The aggregate estimate comes to \$1.33 billion, and the actual cost will be far higher, as discussed above. While not all of this cost may be eligible for reimbursement, Congress clearly did not intend to saddle the telecommunications industry with a billion dollars or more in unreimbursed costs for compliance with design standards developed by the FBI and imposed by the FCC years after CALEA was enacted and after the industry had established a safe harbor standard.

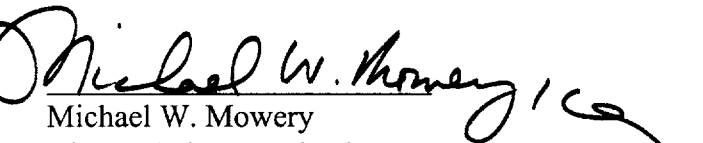
to comply with CALEA under the punch list. It can and should, however, be used to make the determination that the so-called "punch list" is not cost-effective and cannot be required under CALEA.

Respectfully submitted,

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